

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC

Served: July 22, 1992

FAA Order No. 92-50

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In the Matter of:

BILLY F. CULLOP

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) Docket No. CP91EA0572  
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DECISION AND ORDER

Respondent Billy F. Cullop has appealed from the oral initial decision issued by Administrative Law Judge Burton S. Kolko on March 6, 1992, in Albany, New York.<sup>1/</sup> In his initial decision the law judge found that Respondent withdrew his request for a hearing when he failed to appear at the scheduled hearing in his case. The law judge affirmed the \$1,000 civil penalty sought in the complaint. For the reasons set forth below, the decision of the law judge is affirmed.

The complaint alleged that Respondent, the holder of an airframe and powerplant mechanic certificate, failed to repair

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<sup>1/</sup> A copy of the law judge's oral initial decision is attached.

properly the left elevator fairing on a Beech BE99 aircraft.<sup>2/</sup>

On November 21, 1991, the law judge served the parties with an order regarding initial procedures, which gave them until December 20, 1991, to submit suggested hearing sites. Complainant suggested that the hearing be held in Albany, New York, because that location was in proximity to Complainant's witnesses. Respondent did not submit a suggested hearing location to the law judge by the December 20th deadline.<sup>3/</sup>

On January 6, 1992, the law judge served the parties with an Order Scheduling Hearings notifying them that the hearing would be held in Albany, New York, on March 6, 1992, at 9 A.M. On January 13, 1992, the law judge served the parties with a Notice of Hearing that provided the date, time,

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<sup>2/</sup> The complaint also alleged that Respondent improperly approved the aircraft's return to service and failed to make the required entries in the maintenance records. As a result of Respondent's failure to repair the left elevator properly, Complainant alleged, elevator sticking occurred during a landing on April 9, 1990, at Syracuse Hancock International Airport in Syracuse, New York. It was alleged that Respondent violated Sections 43.13(b); 43.5(a), (b); and 43.9(a) of the Federal Aviation Regulations (FAR), 14 C.F.R. §§ 43.13(b); 43.5(a), (b); 43.9(a).

<sup>3/</sup> Respondent also never filed an answer to the complaint, but the law judge construed his hearing request as an answer. Due to the conclusion reached in this decision, the issue of whether the law judge correctly construed a hearing request that preceded the issuance of the complaint, as an answer, need not be addressed.

and exact location of the hearing.<sup>4/</sup>

Respondent did not appear at the hearing in Albany, New York on March 6, 1992. The law judge indicated in his oral initial decision that Respondent had not been heard from since his August 27, 1991, hearing request. The law judge stated that:

I have traveled from Washington, Counsel (for Complainant) has traveled from New York and the prospective witnesses have traveled to this site at considerable taxpayer expense to give the Respondent a hearing to which he was entitled, based upon his request. He, however, has not shown up. (TR 4)

The law judge found that Respondent had withdrawn his request for a hearing by his failure to appear. The law judge affirmed the \$1,000 civil penalty sought in the complaint.

Upon returning to his office in Washington, DC, the law judge discovered that on March 6th, the date of the hearing, his office had received a note from Respondent dated March 3rd. In the note, Respondent requested that a hearing be held in the Utica-Rome, New York area. Respondent explained that "[d]ue to the lack of full-time work and no reliable transportation I have neither the ways nor the means to run to Albany for a hearing." Respondent's note was received in the law judge's office at 3:05 P.M., after the 9 A.M. hearing in Albany had ended.

The law judge issued a notice to the parties advising them

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<sup>4/</sup> The Notice of Hearing, served on Respondent by certified mail, was returned to the law judge by the Postal Service marked "refused." The Notice of Hearing was served again on Respondent by regular mail, and was not returned to the law judge by the Postal Service.

that he was forwarding Respondent's case to the Administrator because Respondent's March 3rd note could be construed as an appeal of the oral initial decision. On April 27, 1992, the Administrator received a letter from Respondent, in which he renewed his request for a Utica-Rome location for the hearing. Respondent stated in the letter that he was out of work and had no reliable transportation.

Assuming that Respondent's letter to the Administrator constituted an appeal brief,<sup>5/</sup> and therefore, that Respondent perfected his appeal, Respondent's appeal is denied as without merit.

In determining the location of a hearing, the law judge "shall give due regard to the convenience of the parties, the location where the majority of the witnesses reside or work, and whether the location is served by a scheduled air carrier." See Section 13.221(b) of the Federal Aviation Regulations (FAR), 14 C.F.R. § 13.221(b). Complainant's witnesses reside or work near Albany, New York. Respondent has not identified any witness who would testify on his behalf. Respondent's mailing address is Taberg, New York, approximately 120 miles from Albany, New York. For these

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<sup>5/</sup> Complainant filed with its reply brief, a Motion to Dismiss Respondent's appeal. In the motion Complainant argues that Respondent's letter, received April 27th, did not meet the requirements for an appeal brief under Section 13.233(d)(1) of the FAR, 14 C.F.R. § 13.233(d)(1). As a result, Complainant argues, Respondent failed to perfect his appeal as required by Section 13.233(c), 14 C.F.R. § 13.233(c), and the appeal should be dismissed. This issue, however, need not be addressed because of the conclusion reached in this decision.

reasons, the Albany, New York, hearing site was not unreasonable in this case.<sup>6/</sup>

The law judge provided Respondent with approximately one month to suggest a hearing location. Respondent did not do so, even after he was served with Complainant's request that the hearing be held in Albany. Subsequently, Respondent was served with two notices from the law judge, indicating that the hearing would be held in Albany. Not until seven weeks after the hearing notices were issued, and three days before the hearing, did Respondent write to the law judge requesting a Utica-Rome hearing. Respondent's request was received in the law judge's Washington DC office in the afternoon of March 6th, after the Albany hearing had concluded and the oral initial decision had been issued.

Respondent has not explained his nearly three-month delay in requesting a Rome-Utica hearing location. Respondent's request was so late that Complainant did not have a chance to respond, and the law judge did not have an opportunity to rule

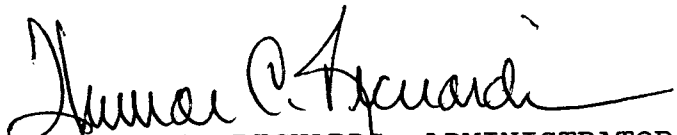
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<sup>6/</sup> See generally Administrator v. Prout, NTSB Order No. EA-3062 (January 3, 1990) (denial of Respondent's request for a hearing in Homer, Alaska instead of Anchorage, Alaska, 100 miles away, was not error, although Respondent had to take a day off from work and pay travel expenses; Administrator v. Pritchard, NTSB Order EA-3024 (November 1, 1989), (where Complainant's witnesses were in Kansas City, and Respondent resided in Texas and failed to identify his witnesses' residence, the hearing was properly held in Kansas City, although Respondent incurred a greater financial burden; Administrator v. Berko, NTSB Order No. EA-3005 (September 27, 1989) (denial of Respondent's request for a hearing in New York, where Respondent resided, instead of Alaska where Complainant's witnesses resided, was within the law judge's discretion).

on the request. The law judge, as well as Complainant's counsel and witnesses, traveled to Albany for a hearing. In light of the lateness of Respondent's request for a different hearing location, the law judge's initial decision will not be disturbed and the case will not be remanded for a new hearing.

Also, Respondent did not explain why, with seven weeks notice, he could not arrange for transportation from Taberg to Albany, New York, for the hearing. The fact that Respondent lacked full-time work, or was out of work, did not excuse his non-appearance at the hearing.<sup>7/</sup>

Accordingly, the law judge's decision to assess the \$1,000 civil penalty sought in the complaint is affirmed.<sup>8/</sup>

  
THOMAS C. RICHARDS, ADMINISTRATOR  
Federal Aviation Administration

Issued this 20th day of July, 1992.

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<sup>7/</sup> See footnote No. 6 above.

<sup>8/</sup> Unless Respondent files a petition for review with a Court of Appeals of the United States within 60 days of service of this decision (under 49 U.S.C. App. § 1486), this decision shall be considered an order assessing civil penalty. See 14 C.F.R. §§ 13.16(b)(4) and 13.233(j)(2) (1992).